

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Central New York Oil And Gas Company, LLC)))	Docket No. CP10-480-000
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SUPPLEMENTAL COMMENTS OF CNYOG

On July 11, 2011, Central New York Oil And Gas Company, LLC (“CNYOG”) filed Comments in support of the EA issued in this docket. Those Comments included responses to some of the more substantive comments filed by others in this docket. Several substantive comments were filed by others on July 11, 2011, too late for CNYOG to evaluate and respond to them. Those included comments by Earthjustice on behalf of the Coalition for Responsible Growth and Resource Conservation, Damascus Citizens for Sustainability, and Sierra Club, by the Lower Susquehanna RIVERKEEPER and Stewards of the Lower Susquehanna, Inc., by Trout Unlimited, and by the U.S. Environmental Protection Agency (“EPA”) Region III. These comments raise substantive objections, some for the first time, to the EA published in this docket. Accordingly, CNYOG believes it appropriate to file brief responsive comments to these recent filings. In doing so, CNYOG will not repeat the points previously made in its July 11, 2011 Comments in Support of the EA; where appropriate, however, CNYOG will reference the aspects of those Comments that are also directly responsive to issues raised in the July 11 comments to which this filing is directed.

A. EARTHJUSTICE

Earthjustice’s comments repeat and expand upon arguments previously made by Earthjustice in comments filed on October 26, 2010, December, 14, 2010, December 20, 2010, January 3, 2011, March 8, 2011, May 2, 2011, May 25, 2011, and June 30, 2011, to which

CNYOG filed responses on November 24, 2010, December 28, 2010, January 12, 2011, and July 1, 2011. CNYOG incorporates by reference the latter responses to the extent responsive to the issues and arguments raised in Earthjustice's July 11, 2011 comments.

1. Cumulative Impact Analysis

A significant proportion of Earthjustice's July 11 comments are devoted to Earthjustice's belief that the EA has not adequately considered "cumulative effects" of the proposed MARC I Project. Although CNYOG agrees with Earthjustice's contention that cumulative effects must be considered, CNYOG disagrees with the scope of the assessment advocated by Earthjustice. The premise of Earthjustice's position lies in its characterization of the MARC I Project as the "catalyst" for Marcellus Shale development in the three-county area traversed by the pipeline and would "facilitate the development of the Marcellus Shale."¹ This premise is flawed.

Development of the Marcellus Shale resources in northeast Pennsylvania will continue regardless of whether the MARC I Hub Line is certificated and constructed. In the absence of a certificated interstate pipeline, producers or developers of unregulated "midstream" gathering assets will simply build longer, unregulated gathering lines – lines not subject to the environmental protections which NEPA affords – to connect wells in the three-county area to interstate pipelines (Transco and Tennessee) running east-west to the north and south of this development area. This fact is well demonstrated by the PVR gathering line running in a generally north-south orientation to the west of the proposed MARC I alignment and the proposed Williams Springville gathering line to the east.

Further, cumulative impact analysis is required of "connected" actions if those actions –

- (i) automatically trigger other actions which may require environmental impact statement;

¹ Comments on Scope of EA to be Prepared for MARC I Hub Line Project, at 2 (October 26, 2011).

- (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; and/or
- (iii) are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). Under these criteria, the MARC I Project is not connected to drilling of wells to develop Marcellus Shale resources in northeastern Pennsylvania.

First, none of the other activities, which Earthjustice claims are sufficiently connected to the MARC I Project as to require consideration of their environmental impacts in the cumulative impact analysis of the MARC I Project, require an EIS. Second, neither past nor future gas well development activities are an essential predicate for the MARC I Project. The MARC I Project is not merely a gathering system for delivery of gas from Marcellus Shale wells to interstate pipelines. The MARC I Project is a bi-directional Hub Line, interconnecting Transco, Tennessee, the Stagecoach storage facility and Millennium, with bi-directional receipt/delivery points at each of those planned interconnects, to enable gas to flow between the three major interstate pipeline systems in response to market demands, and to provide access for all three pipelines to storage assets at Stagecoach. Third, development of gas wells in northeastern Pennsylvania and the MARC I Project are not “interdependent parts of a larger action.” In particular, the MARC I Project does not depend on any “larger action,” such as the development of Marcellus Shale in northeastern Pennsylvania, for its justification. The firm shippers, who have executed binding Precedent Agreements for capacity on the MARC I pipeline, have subscribed to bi-directional firm capacity rights *between* Transco on the south and Tennessee and Stagecoach on the north. These commitments will go forward upon completion of the Project regardless of whether there is increased development of Marcellus Shale in the three county area affected by the Project.

The demand for the Hub Line interconnections proposed by CNYOG is undoubtedly

related to increased production of natural gas throughout the entire Marcellus Shale region, including much of Pennsylvania, West Virginia, and other states, including New York in the future. It is the *overall* incremental throughput on the three interstate pipelines, not merely Marcellus Shale gas production in the northeastern Pennsylvania region, which underlies the commercial rationale for the MARC I Project. The MARC I Project responds to the need for greater flexibility in the transmission grid to enable shippers to respond to changing market conditions. For that reason, the MARC I Project is not dependent on Marcellus Shale development in northeastern Pennsylvania for its justification. Failing to meet any of the criteria established by the Council on Environmental Quality (“CEQ”) regulations for “connected actions,” the cumulative impact analysis of the MARC I Project need not assess the environmental consequences of development of the Marcellus Shale in northeastern Pennsylvania.

CEQ regulations define “cumulative actions” as actions which “when viewed with other proposed actions have cumulatively significant impacts.” 40 C.F.R. § 1508.25(a)(2). The EA was correct in determining that drilling of unspecified and unidentified wells and construction of nonspecific infrastructure not requiring federal permitting authorization was not required to be considered as part of the cumulative impact analysis. The MARC I Project and the drilling of such wells and construction of such infrastructure are not “cumulative actions” because they do not have cumulatively significant impacts within the meaning of NEPA or the CEQ regulations.

2. Alternatives That Do Not Require Greenfield Development

Earthjustice faults the EA’s analysis of Project alternatives. Specifically, Earthjustice criticizes the EA for not considering locating the MARC I pipeline “along the same right-of-way as another pipeline” in order to “substantially reduce the Project’s impacts, especially its forest

fragmentation impacts.”² The “alternative routes” identified by Earthjustice are the PVR gathering line, which by Earthjustice’s own admission is located 38 miles to the west of the proposed MARC I alignment, and the Williams Springville gathering system, construction of which is far from complete and is located some 15 miles to the east of the proposed MARC I alignment.³

The unrealistic nature of these alternatives is evident from the distances involved and the inability of either supposed alternative to fulfill the commercial purpose of the proposed MARC I Project. The MARC I Project is designed not only to connect bi-directionally with Tennessee and Transco, but also to connect bi-directionally with the Stagecoach storage system and, through the Stagecoach laterals, with Millennium. To do so utilizing the PVR corridor would more than double the length of the 39-mile long MARC I pipeline by requiring CNYOG to parallel the Tennessee right-of-way for 38 miles or more to a point at which the MARC I Pipeline could interconnect with Stagecoach.⁴ The Williams Springville gathering line does not connect with Tennessee, and substantial additional “Greenfield” construction would be required in order to permit a right-of-way aligned with the Williams Springville gathering system to connect with Tennessee. In addition, more than 15 miles of additional pipeline construction (presumably paralleling the Tennessee right-of-way) would be required in order to interconnect with the Stagecoach South Lateral. Absent such substantial additional construction, with attendant increase in environmental impacts and construction costs,⁵ the fundamental business

² Comments of Earthjustice at 12 (July 11, 2011).

³ Earthjustice’s suggestion that FERC consider co-locating the MARC I Project on the Williams Springville route appears disingenuous, given that Earthjustice’s clients also oppose the Williams Springville project.

⁴ EPA Region III’s suggestion to the same effect is likewise deficient for the same reason. Comments of EPA Region III, Attachment at 4 (July 11, 2011).

⁵ The additional cost of construction utilizing either alternative would render the MARC I Project uneconomic.

purposes of the MARC I Project would not be accomplished by use of either the PVR or the Williams Springville corridor. Nothing in NEPA requires the Commission to consider alternatives that will not achieve the commercial objectives of the proposed activity.

In Response Comments filed on July 18, 2011, Earthjustice opposed CNYOG's request for a certificate to be issued by July 29, 2011. Earthjustice's Response claims that CNYOG has not provided "a compelling reason for construction of this Greenfield pipeline."⁶ Earthjustice relies on the comments of EPA Region III, discredited and refuted below, to support this claim. Further, Earthjustice attempts to use CNYOG's own filings to support the purported lack of need for the MARC I Project. Thus, Earthjustice states:

By CNYOG's own admission, "Other pipelines such as Tennessee Gas Pipeline and Transco, are capable of transporting gas produced from Marcellus shale that is delivered to these pipelines directly from producer-operated gathering lines rather than through the MARC I line."

This statement is taken out of context. The statement was made with respect to CNYOG's contention that, if the MARC I Project is not approved due to environmental objections, multiple, smaller unregulated gathering lines will be built throughout the same region to deliver gas to other interstate pipelines which are indeed "capable of transporting gas produced from Marcellus shale that is delivered to these pipelines directly from producer-operated gathering lines." This statement says nothing about the need for the MARC I Project **as a hub line** interconnecting the west-east running interstate pipelines serving the region, Tennessee, Transco and Millennium, with the Stagecoach storage facility so as to provide additional transportation and storage options to shippers on all three interstate systems. Earthjustice's effort to distort the

⁶ As a technical matter, CNYOG disputes Earth justice's claim that a "compelling" reason is required before the Commission may issue a certificate in this docket. There is no such heightened burden of proof under the NGA and CNYOG has adequately demonstrated that the proposed Project serves the public convenience and necessity under the Commission's Certificate Policy Statement. No more is required.

record in support of its contention that CNYOG has not demonstrated a need for the Project should be rejected and a Certificate issued by July 29, 2011, to enable CNYOG to construct the pipeline in time to meet the in-service date requested by CNYOG's firm shippers.

3. Invasive Plant Species, Bats and Migratory Bird Protection

Earthjustice complains about the lack of an Invasive Species Management Plan. The EA adequately addresses this issue by recommending an Environmental Condition requiring a Noxious Weed and Invasive Species Management Plan to be filed with and approved by the Commission prior to commencement of any construction activity.

Earthjustice complains that a revised Migratory Bird Impact Assessment Plan ("Plan") has not been filed by CNYOG.⁷ This criticism is unwarranted. The original Plan was submitted for comment to the U.S. Fish and Wildlife Service ("USFWS") on February 14, 2011. CNYOG is waiting on those comments so they can be incorporated into the revised Plan before submission to the Commission. It would be imprudent for CNYOG to file the revised Plan without taking the USFWS's comments into account. Nevertheless, under the circumstances, CNYOG may have no choice but to file the revised Plan without the comments of USFWS if those comments are not received shortly.

Earthjustice also criticizes CNYOG's proposed alignment because of the existence of designated Important Bird Areas "on both sides of the Project."⁸ The pipeline does not run through any such Areas, however, and in fact, Pennsylvania Audubon has complimented CNYOG for avoiding such Areas.⁹

Despite CNYOG's compliance with all applicable bat survey protocols, Earthjustice is

⁷ Comments of Earthjustice at 19-20 (July 11, 2011).

⁸ Comments of Earthjustice at 14 (July 11, 2011).

⁹ Comments of Pennsylvania Audubon at 2 (July 11, 2011).

dissatisfied by the results.¹⁰ Earthjustice proposes that the EA’s consideration of Endangered Species impacts, particularly related to the endangered Indiana bat, be expanded to consider a variety of non-endangered bats, concluding that “the welfare of every individual bat is vital.”¹¹ Nothing in NEPA or the ESA requires expansion of the scope of the EA to provide the same degree of evaluation for non-endangered species as endangered species.

4. Susquehanna River Crossing

Earthjustice adopts the criticisms of Daniel Alters concerning a potential “open cut” of the Susquehanna River.¹² In its July 11 Comments in Support of the EA, CNYOG explained that no open-cut of the Susquehanna has been proposed and no permit for an open-cut of the Susquehanna has been requested.¹³

5. Claimed Controversial Nature of the MARC I Project

Earthjustice seeks to bootstrap its arguments in favor of an EIS with the assertion that the Project is “controversial.”¹⁴ CNYOG recognizes that legitimate concerns have been raised in this proceeding, and CNYOG believes that most of those concerns have been addressed by CNYOG or by mitigation measures proposed in the EA. CNYOG strongly disagrees, however, with Earthjustice’s attempts to demonstrate an “outpouring of public protest” by drawing attention to “form” letters prepared and solicited by Earthjustice via the internet (including submissions from individuals in 25 foreign countries), while only 42 such letters¹⁵ were

¹⁰ Comments of Earthjustice at 19 (July 11, 2011).

¹¹ Comments of Earthjustice at 19 (July 11, 2011).

¹² Comments of Earthjustice at 18, n.1 (July 11, 2011).

¹³ Comments of CNYOG in Support of EA at 6-7 (July 11, 2011).

¹⁴ Comments of Earthjustice at 28-29 and n.48 (July 11, 2011).

¹⁵ Earthjustice’s Response to CNYOG’s Comments challenges CNYOG’s claim that only 37 letters were from individuals living within the three-county area in which the pipeline will be constructed, asserting the number to have been “[i]n fact more than 50.” The number is in fact 42, not “more than 50” as Earthjustice claims. More fundamentally, Earthjustice’s dispute is petty, given that additional letters were submitted on

submitted from individuals living within the three-county area.¹⁶ If anything, these “form” submissions are no more credible than a company-organized write-in campaign from Inergy’s shareholders in support of the EA; they hardly demonstrate the real (as opposed to a drummed-up) level of opposition to, or controversy involved with, this Project.

B. EPA REGION III

EPA Region III filed comments with targeted criticisms of aspects of the EA’s cumulative impact analysis. CNYOG believes these alleged deficiencies have been adequately responded to in CNYOG’s responses to similar contentions made by Earthjustice and others.

EPA Region III also concludes that an EIS would be appropriate, a conclusion supported, in part, by the 20,000 form letters solicited by Earthjustice via the internet. As explained above, these submissions provide no more support for an EIS than they evidence the existence of real – as distinguished from trumped up – controversy.¹⁷

CYNOG notes that EPA Region III’s involvement and position in this matter is a stark departure from its practice of not commenting on pipeline projects as long as the project is not receiving any federal funds.¹⁸ CNYOG finds EPA Region III’s support for a full-blown EIS in

July 11, 2011, too late for CNYOG to have taken them into account in its timely filed Comments on the EA. The point remains valid, however, whether the number is 37, 42, 50 or 150: the approximately 22,000 internet-generated form letters are evidence of little more than Earthjustice’s prowess in generating form letters over the internet, not of the existence of substantive controversy.

¹⁶ EPA Region III falls victim of the same error in relying on the internet-generated form letters as evidence of the alleged “controversial” nature of the Project. The Project may be controversial, but the “more than 20,000” form letters hardly evidence that fact.

¹⁷ EPA Region III’s conclusion that an EIS is warranted based on alleged “controversy” should not deter rational decision makers from focusing on the facts, which in this instance strongly argue that an EA is sufficient. If lobbying efforts such as Earthjustice’s internet campaign are given credence (as advocated by EPA Region III), then it is difficult to envision how *any* future pipeline project will be able to surmount opposition armed with a computer and a blog capable of generating tens of thousands of electronically generated, unsigned form letters of opposition from individuals located literally anywhere on the planet. This view is clearly inconsistent with the Commission’s rules, standards and policies.

¹⁸ In December 2008, Tennessee Gas Pipeline Co. submitted its Pre-File Participation Matrix for its 300 Line Project. *Tennessee Gas Pipeline Co.*, Docket No. PF09-1 (filed December 1, 2008). Page 1 of that Matrix shows that Andrea Bennett, representing EPA Region III, indicated that Region III would not be a

this docket odd in light of Region III's recent decisions not to take similar positions on much larger projects in the same region. For example, Tennessee's 300 Line Project (Docket No. CP09-444-000) is located in the same general area as the proposed MARC I Project. Tennessee's 300 Line Project involves 127 miles of 30-inch diameter pipe, construction of two compressor stations and modification of seven existing compressor stations, along with installation of associated appurtenant above-ground facilities. EPA Region III elected not to provide any input on the 300 Line Project. That fact raises questions concerning the credibility of EPA Region III's support for a full-blown EIS in this docket.

Fundamentally, EPA Region III's position ignores the overriding critical facts that the MARC I Project is only 39 miles in length, does not go through any identified endangered species habitat, avoids to the maximum degree possible wetlands and other environmentally sensitive areas, and will employ best management practice to mitigate environmental impacts.

The Region III comments are also based on fundamental misunderstanding of the facts as illustrated by misstatements included in the Region III comments. EPA Region III states that the project "would clear and fragment an undeveloped swath of forested and agricultural land...". Agricultural lands are a result of removing the previously existing trees (*i.e.*, developing) to allow the land to be actively managed by farming. The entire region consists of second growth forests intermixed with areas of active agriculture. Indeed some of the areas proposed for clearing for the pipeline right-of-way have already been cleared by the landowners.

In the Attachment to Region III's comments regarding Water Quality, Region III indicates that "any construction would need to meet the Erosion and Sediment Control

participating agency "[a]s long as Project is not receiving any federal funds." Likewise in that same docket, Larry Rinaldo, representing EPA Region II, indicated that Region II would not be a participating agency, stating that the "Project is exempt from EPA review because the Project will not use federal funds."

Requirements of Chapter 102 in the Pennsylvania Code (including riparian buffer requirements for special protection waters . . .).”¹⁹ Chapter 102.14(d)(2)(ii) Riparian Buffer Requirements, itself prescribes an exception which Region III’s comments ignore. Thus, Chapter 102.14(d)(2)(ii) provides:

(2) For earth disturbance activities associated with the following, the Department, or the conservation district after consultation with the Department, may grant a waiver from any of the requirements of subsections (a) and (b) upon a demonstration by the applicant that there are reasonable alternatives for compliance with this section, so long as any existing riparian buffer is undisturbed to the extent practicable and that the activity will otherwise meet the requirements of this chapter:

...

(ii) Linear projects which may include pipelines, public roadways, rail lines or utility lines.

Under this section, the project qualifies for a waiver of the riparian buffer requirements. In the spirit of being a conscious environmental steward, however, CNYOG is voluntarily proposing a riparian forest buffer mitigation plan to provide additional protection to the most sensitive water bodies crossed by the Project.

Another substantive error in Region III’s comments is the statement that “condensate . . . is primarily brine.”²⁰ This statement undoubtedly colored Region III’s recommendation that the NEPA analysis consider CNYOG’s method for handling “condensate.” This statement reflects a fundamental misunderstanding of pipeline, and indeed natural gas production, methods and technology. Condensate is a product of the production of natural gas.

“Condensate” means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of

¹⁹ Comments of EPA Region III, Attachment at 1 (July 11, 2011).

²⁰ Comments of EPA Region III, Attachment at 1 (July 11, 2011).

liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.²¹

The term is used to refer to liquid hydrocarbons recovered by surface separators.²² Condensate does not form in interstate pipelines.²³ Moreover, condensate is not “primarily brine.”

Finally, a simple review of CNYOG’s FERC Gas Tariff on file with the Commission and the revisions thereto proposed by CNYOG in Exhibit P to the MARC I Application would have disabused Region III of its misunderstanding and its unfounded concern. CNYOG’s FERC Gas Tariff provides that a cricondentherm hydrocarbon dew point (“CHDP”) of 15°F applies to gas received at “Intermediate Points,” *i.e.*, points other than the interconnects with other interstate pipelines.²⁴ This standard assures that no “condensate” (with or without “brine”) is delivered to the MARC I Receipt Points. CNYOG’s FERC Gas Tariff also requires gas delivered to the pipeline to have been “dehydrated for removal of entrained water present therein in a vapor state.”²⁵ This standard assures that brine (whether or not in condensate) is not delivered to the MARC I Receipt Points. EPA Region III’s concerns are misplaced and unfounded.

EPA Region III’s comments on the EA’s use of the terms “ephemeral,” “intermittent” and “perennial” to describe streams crossed by the MARC I Project. Region III requests citations to the source for these classifications and suggests that “stream . . . classification [is]

²¹ Williams and Myers, “Manual of Oil and Gas Terms” at 186 (13th Ed. 2006), citing 30 C.F.R. §§ 206.101 and 206.151.

²² Williams and Myers, “Manual of Oil and Gas Terms” at 187 (13th Ed. 2006).

²³ EPA Region III is evidently confusing the MARC I Project with unregulated gathering lines in which natural gas liquids are frequently transported with unprocessed gas.

²⁴ CNYOG FERC Gas Tariff, First Revised Vol. No. 1, Section 6.7, GT&C § 7.2(i). CNYOG proposed to apply this CHDP standard to gas received from producers at Intermediate Points on the MARC I Project. CNYOG Certificate Application, Docket No. CP10-480-000, Ex. P, Revised Tariff, Second Revised Sheet No. 93.

²⁵ CNYOG FERC Gas Tariff, First Revised Vol. No. 1, Section 6.7, GT&C § 7.2(g). CNYOG’s Tariff also authorizes CNYOG to process non-compliant Gas to meet the Tariff’s gas quality specifications and to charge the shipper the cost of doing so. This assures that gas entering the MARC I Pipeline will meet the Tariff’s gas quality specifications.

directly related to the species of fish and other aquatic resources that may inhabit the streams.”²⁶

This comment belies Region III’s fundamental lack of understanding of stream- and fisheries-related issues. These classifications are well known and are used by the U.S. Army Corp. of Engineers to designate flow characteristics of water ways, similar to using blue lines, blue dashed lines or no lines on topographical maps. These designations are not used for fishery classifications. More fundamentally, if the stream flow is not continuous and reliable, which is the case for “ephemeral,” and “intermittent” streams, no fish are present because they depend on continuous stream flows. Region III’s confusion of unrelated classifications belies Region III’s fundamental lack of sufficient knowledge of the MARC I Project to form an informed judgment on the environmental consequences of the project.

EPA Region III falls into the same error as Earthjustice in advocating consideration of “alternative” routes which would utilize supposed existing utility corridors to the east and west of the proposed MARC I alignment. The “alternative routes” identified by Region III are the PVR gathering line, located 38 miles to the west of the proposed MARC I alignment, and the Williams Springville gathering system, construction of which is far from complete and is located some 15 miles to the east of the proposed MARC I alignment.²⁷

The unrealistic nature of the alternatives suggested by EPA Region III is evident from the distances involved and the inability of either supposed alternative to fulfill the commercial purpose of the proposed MARC I Project. As previously explained, the MARC I Project is designed not only to connect bi-directionally Tennessee and Transco, but also to connect bi-directionally with the Stagecoach storage system and, through the Stagecoach laterals, with Millennium. To do so utilizing the PVR corridor would more than double the length of the 39-

²⁶ Comments of EPA Region III, Attachment at 3 (July 11, 2011).

²⁷ Comments of EPA Region III, Attachment at 4 (July 11, 2011).

mile long MARC I pipeline by requiring CNYOG to parallel the Tennessee right-of-way for 38 miles or more to a point at which the MARC I Pipeline could interconnect with Stagecoach. The Williams Springville gathering line does not connect with Tennessee at all and likewise would require substantial additional construction, including “Greenfield” right-of-way, with attendant environmental impacts and increased construction costs. Absent such construction (which would render the Project uneconomic), the fundamental business purposes of the MARC I Project would not be accomplished by use of the PVR or Williams Springville corridors. Nothing in NEPA requires the Commission to consider alternatives that will not achieve the commercial objectives of the proposed activity.

EPA Region III alleges that a “discrepancy” exists between the identification in Table C.3-1 of the EA²⁸ of an impact to at least one forested wetland under the USFWS’s National Wetlands Inventory (“NWI”) and the statement in Section B.3.d of the EA²⁹ that no Palustrine Forested Wetlands would be disturbed by the Project.³⁰ No discrepancy exists and EPA Region III’s allegation is false. The USFWS maps identifying forested wetlands were consulted for guidance. Actual field surveys were conducted to verify the accuracy of the NWI in the actual proposed alignment. Field surveys are far more accurate than the NWI maps. Those field surveys were the basis for the *substantive* statement in the EA analysis that no Palustrine Forested Wetlands would be disturbed by the Project, while Table C.3-1 identified the NWI areas identified by USFWS (without regard to demonstrated errors and deficiencies in that database). Again, Region III’s comment is without merit.

Finally, in discussing alleged inadequacies in the EA’s assessment of cumulative impacts,

²⁸ EA at 114.

²⁹ EA at 40.

³⁰ Comments of EPA Region III, Attachment at 4 (July 11, 2011).

Region III asserts its belief that “the NEPA analysis should contain an air modeling analysis for the Project.”³¹ Once again Region III’s comments lack foundation and evidence a fundamental lack of understanding of the environmental analysis provided by CNYOG in support of the Application. Extensive air modeling was performed for the Project, despite EPA Region III’s mistaken belief to the contrary. The results of that modeling have been publicly filed in this docket support of the MARC I Project.³²

C. LOWER SUSQUEHANNA RIVERKEEPER AND STEWARDS OF THE LOWER SUSQUEHANNA, INC.

Preliminarily CNYOG notes that the Lower Susquehanna River Basin is located well south of the MARC I Project area. The Lower Susquehanna River Basin will be affected, if at all, only indirectly and for a limited period by construction activity involving stream and river crossings well upstream from the Lower Susquehanna River Basin.

1. The Premise Of The Lower Susquehanna RIVERKEEPER And The Stewards Of The Lower Susquehanna, Inc. Is Flawed. Rejection Of The MARC I Project Will Not Stop Development Of Marcellus Shale Resources In Northeastern Pennsylvania.

It is evident that the Lower Susquehanna RIVERKEEPER and the Stewards of the Lower Susquehanna, Inc. do not seek additional mitigation measures or changes in the alignment of the MARC I right-of-way; they seek nothing less than rejection of the certificate application. The premise – that rejection of the MARC I certificate application will avoid potentially adverse environmental consequences due to development of the Marcellus Shale resources in northeastern Pennsylvania – is fundamentally flawed. Rejection of the MARC I Project will NOT stop development of Marcellus Shale resources in northeastern Pennsylvania by producers

³¹ Comments of EPA Region III, Attachment at 6 (July 11, 2011).

³² Certificate Application, Resource Report 9 at Section 9.2 (August 6, 2010); CNYOG Responses to the First Set of Environmental Data Requests dated September 7, 2010 at Response Nos. 59-66 (September 27, 2010); CNYOG Request to Modify Compression (June 30, 2011).

who already hold leases for thousands of potentially productive acres of land throughout the region and have filed for permits to drill numerous wells. Rejection of the MARC I certificate application will merely result in construction of many more miles of small diameter gathering lines, in the aggregate likely far more than the single, large diameter, 39-mile long MARC I pipeline, without any federal regulatory supervision and potentially far greater environmental impact. For example, although CNYOG conducted costly mist-net surveys of the entire pipeline right-of-way to determine whether any Indiana bats were present, so as to safeguard against unintended removal of essential habitat such as roosting trees, the Williams Springville gathering line cleared an equally long right-of-way without conducting a single mist-net survey, possibly destroying valuable Indiana bat habitat in the process without any federal regulatory supervision.

2. Impacts On EV And HQ Waters.

The joint comments of the Lower Susquehanna RIVERKEEPER and the Stewards of the Lower Susquehanna, Inc. track closely those of Earthjustice respecting claimed inadequacy of the EA's cumulative impact assessment and the need for an EIS. CNYOG's responses to Earthjustice respecting these issues are incorporated by reference.

The Lower Susquehanna RIVERKEEPER and the Stewards of the Lower Susquehanna, Inc. raise two additional contentions: (1) the EA fails to adequately evaluate impacts on EV and HQ waters; and (2) the EA relies too heavily on other agencies' regulatory requirements rather than conducting an "independent" analysis.

FERC's reliance on federal and state agencies with particularized knowledge and expertise respecting protection of designated resources, such as USFWS and the Pennsylvania Department of Environmental Protection ("PADEP"), is reasonable and appropriate. The EA did not abdicate FERC's responsibilities under NEPA; rather, the EA assessed the potential

environmental consequences of the Project with respect to the identified resources and correctly concluded that compliance with federal and state permitting and regulatory requirements for the protection of the designated resource would adequately mitigate any potential environmental harm.

In particular, the EA assessed the potential impacts on EV and HQ waters in light of the regulatory and permitting requirements adopted by the Commonwealth of Pennsylvania for protection of those waters. Neither EPA's regulations nor those of the FERC designate ANY waters in Pennsylvania as "EV" or "HQ" waters. That designation is a state-agency construct. If there is any validity to the notion (apparently also embraced by EPA Region III and Trout Unlimited) that certain waters warrant greater protection because of such designation, it is only because of the state designation. Neither EPA Region III nor Trout Unlimited have provided any independent basis for special protection of such waters separate from their designation by the Commonwealth of Pennsylvania. Under these circumstances it is wholly appropriate for FERC to look to the requirements of the state agencies with expertise in such matters to determine whether compliance with the agencies' permitting and other requirements will adequately safeguard and protect those attributes of the stream which were the basis for the state designation in the first instance.

D. TROUT UNLIMITED

Trout Unlimited claims that 40 streams within a six-mile "buffer zone" surrounding MARC I have "yet to be assessed by the PFBC to determine whether wild trout populations exist."³³ Thus, Trout Unlimited argues that "[w]ithout knowing whether the 40 unassessed streams contain wild trout populations, the possible effects of the MARC I Project on trout

³³ Comment of Trout Unlimited at 3 (July 11, 2011).

populations and trout waters is highly uncertain,” and such uncertainty warrants a full EIS.³⁴

Trout Unlimited has shown no reason why the Project might impact any of the supposedly “unassessed” streams even if wild trout were assumed to be present. Where the unassessed streams are located topographically on the other side of a ridge or uphill from the proposed pipeline alignment, there is no reason to believe that the Project will adversely affect any wild trout that might be located in such streams. Such is the case here.

Trout Unlimited states that “[a]s of early May 2011, there were a total of 57 streams in the six-mile buffer . . . that were prioritized for assessment by the PFBC, due to the likelihood of wild trout presence based upon stream location within the watershed and past documentations of wild trout presence.”³⁵ Since that time, 18 of the 57 streams have been assessed and 6 streams have been found to have trout present: 2 tributaries to the Mehoopany Creek (Cherry Ridge Run and Smith Cabin); 1 tributary to Loyalsock Creek (Pigeon Creek); and 3 tributaries to Muncy Creek (Lopez Pond Branch, South Branch, and Rock Run). Trout Unlimited argues that these streams “must receive special protections to ensure the integrity of the trout populations and water resource.”³⁶ Again, Trout Unlimited’s comments do not take into account the geographic and topological characteristics of the location of the proposed MARC I right-of-way in relation to the identified streams. Attached to Trout Unlimited’s comments is a map identifying the locations of the 6 streams that were recently found to contain wild trout. Importantly, the MARC I Project crosses none of the 6 streams. One of the streams, located in Wyoming and Luzerne counties, is well outside the artificial six-mile “buffer zone” surrounding the MARC I Project. Further, the remaining five recently-assessed streams are on the outer edge of the “buffer zone”

³⁴ Comment of Trout Unlimited at 3 (July 11, 2011).

³⁵ Comment of Trout Unlimited at 4 (July 11, 2011).

³⁶ Comment of Trout Unlimited at 5 (July 11, 2011).

and their locations relative to the MARC I right-of-way make it unlikely that the MARC I Project would adversely affect any of those streams.

Of the 34 Class A streams highlighted on Trout Unlimited's map, only 6 are located within the six-mile buffer zone and the proposed MARC I right-of-way crosses only one of those. The EA's proposed mitigation condition limiting in-stream construction activity to periods permitted by the appropriate Pennsylvania state regulatory bodies provides adequate safeguards to protect the resources of this and the other streams crossed by the pipeline. Some of these streams are exceptionally narrow, merely a few feet in width, and can be crossed with minimal disruption to natural stream flows and without undue impacts due to soil disturbance or resulting turbidity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 19th day of July 2011.

Nancilee Holland

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